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Expert Group to Conduct a Comprehensive Study on Cybercrime
Vienna, 3–5 April 2018

Draft report

I. Introduction

1. In its resolution 65/230, the General Assembly requested the Commission on Crime Prevention and Criminal Justice to establish, in line with paragraph 42 of the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, an open-ended intergovernmental expert group, to be convened prior to the twentieth session of the Commission, to conduct a comprehensive study of the problem of cybercrime and responses to it by Member States, the international community and the private sector, including the exchange of information on national legislation, best practices, technical assistance and international cooperation, with a view to examining options to strengthen existing and to propose new national and international legal or other responses to cybercrime.

2. The first meeting of the Expert Group was held in Vienna from 17 to 21 January 2011. At that meeting, the Expert Group reviewed and adopted a collection of topics and a methodology for the study (E/CN.15/2011/19, annexes I and II).

3. The second meeting of the Expert Group was held from 25 to 28 February 2013. At that meeting, the Expert Group took note of the comprehensive study of the problem of cybercrime and responses to it by Member States, the international community and the private sector, as prepared by the United Nations Office on Drugs and Crime (UNODC) with the guidance of the Expert Group, pursuant to the mandate contained in General Assembly resolution 65/230 and the collection of topics for consideration within a comprehensive study of the impact of and response to cybercrime and the methodology for that study, as adopted at the first meeting of the Expert Group.

4. In the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation, adopted by the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice and endorsed by the General Assembly in its resolution 70/174, Member States noted the activities of the open-ended intergovernmental expert group to conduct a comprehensive study of the problem of cybercrime and responses to it by Member States, the international community and the private sector, and invited the Commission to consider recommending that the Expert Group continue, based on its work, to exchange information on national legislation, best practices, technical assistance and international cooperation, with a

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view to examining options to strengthen existing responses and to propose new national and international legal or other responses to cybercrime.

5. The third meeting of the Expert Group was held from 10 to 13 April 2017 At that meeting, the Expert Group considered, inter alia, the adoption of the summaries by the Rapporteur of deliberations at the first and second meetings of the Expert Group, the draft comprehensive study of the problem of cybercrime and comments thereto, and the way forward on the draft study, and exchanged information on national legislation, best practices, technical assistance and international cooperation.

6. In its resolution 26/4, adopted at its twenty-sixth session in May 2017, the Commission on Crime Prevention and Criminal Justice requested the Expert Group to continue its work and, in so doing, to hold periodic meetings and function as the platform for further discussion on substantive issues concerning cybercrime, keeping pace with its evolving trends, and in line with the Salvador Declaration and the Doha Declaration, and requested the Expert Group to continue to exchange information on national legislation, best practices, technical assistance and international cooperation, with a view to examining options to strengthen existing responses and propose new national and international legal or other responses to cybercrime.

7. The dates for the fourth meeting of the Expert Group were decided by the extended Bureau by silence procedure on 23 January 2018, and confirmed at its meeting on 26 January 2018.

II. Recommendations

8. During the Expert Group the Rapporteur, with the assistance of the secretariat, noted preliminary suggestions and recommendations focused on strengthening practical responses to cybercrime that were suggested by delegations. A compilation of the suggestions and recommendations is listed as: [...]

III. Summary of deliberations

A. Adoption of the Chair's proposal for the workplan of the Expert Group for the period 2018–2021

9. At its 1st meeting, on 3 April 2018, the Expert Group considered agenda item 1 (c), entitled "Adoption of the Chair's proposal for the workplan of the Expert Group for the period 2018–2021". The Chair's proposal for the workplan of the Expert Group for the period 2018–2021 was adopted.

B. Legislation and frameworks

10. At its [2nd, 3rd and 4th] meetings, on [3 and 4] April 2018, the Expert Group considered agenda item 2, entitled "Legislation and frameworks".

11. The discussion was facilitated by the following panellists: Lu Chuanying (China); George Maria Tyendezwa (Nigeria); Cristina Schulman (Romania); Pedro Verdelho (Portugal); Claudio Peguero (Dominican Republic); Maria Alejandra Daglio (Argentina); and Mohamed Mghari (Morocco).

12. Many delegations referred during the subsequent debate to legislative and policy developments in their countries to address cybercrime and cybersecurity issues. In doing so, they placed emphasis on the key role of capacity-building and technical assistance programmes in supporting successful implementation of national legislation and the building of national capacities for investigations, prosecutions and adjudications, and international cooperation. The need for multidisciplinary approaches involving civil society and the private sector was also highlighted.

13. Many speakers were of the opinion that a new global comprehensive legal instrument on cybercrime was not needed as already existing international instruments such as the Budapest Convention and UNTOC were considered sufficient for developing appropriate domestic and international cooperation responses to cybercrime. In this context, it was highlighted that the Budapest Convention provided an effective legal and operational framework to address cybercrime for both parties to it (including non-members of the Council of Europe) and others for whom the Convention served as a reference, by, inter alia, facilitating international cooperation and harmonization of pertinent criminal law and criminal procedure provisions. Reference was also made to the work of the Cybercrime Convention Committee (T-CY) as well as the capacity-building project GLACY of the Council of Europe, in support of the implementation of the Convention. Next to other outreach projects of technical assistance, for instance within OAS and/or Ecowas. Some speakers also recalled the need to install in any instrument proper conditions and safeguards to protect basic human rights.

14. Other speakers reiterated their opinion that a new legal instrument on cybercrime within the framework of the United Nations is needed. Some speakers stated that they considered the Budapest Convention as a regional legal instrument. Some of the speakers pointed out the closed nature of the accession process of that Convention, namely that it was open for accession by invitation only and subject to the approval of its States parties. Some speakers were of the opinion that the Budapest Convention, in particular its article 32 (b), presented hard to accept challenges in international law such as respect for State sovereignty.

15. As cybercrime was becoming more and more transnational and in many cases are related to organized crime, some speakers considered the United Nations Convention against Transnational Organized Crime relevant to fighting cybercrime.

16. The Expert Group also discussed the relation and differences between cybersecurity and cybercrime; several speakers indicated that the two were different concepts within the very broad challenges of modern use of ICT's. They should therefor be discussed in different and more appropriate forums within the United Nations such as ITU or GGE. Several speakers noted that, however, the topics are interlinked as issues of cybersecurity and needed to be addressed in practice in order to effectively counter cybercrime. A plea was also made for close cooperation and agreements with the private sector.

17. Many speakers expressed appreciation for the work of UNODC through the Global Programme on Cybercrime and shared examples of technical assistance and capacity-building activities carried out under the programme in their countries or regions. Several speakers also noted that other intergovernmental organizations in their regions, such as the Organization of American States and the African Union, were also providing legislative and other types of assistance to counter cybercrime.

18. Speakers expressed appreciation for the work of the Chair and the Bureau of the expert group and of the Secretariat in organizing and preparing for the meeting of the expert group. Many speakers expressed support for the work of the expert group; some speakers stated that it provided a valuable forum for multilateral discussions among experts from diverse jurisdictions. It was further stated that the expert group could play an effective role in discussing responses to the common threats posed by cybercrime, including the technical assistance and capacity-building needs of countries. The adoption by the expert group of the workplan for the period 2018–2021 was welcomed as a step in the right direction.

C. Criminalization

19. At its [4th and 5th] meetings, on [4 and 5] April 2018, the Expert Group considered agenda item, entitled "Criminalization".

IV. Organization of the meeting

A. Opening of the meeting

20. The meeting was opened by André Rypl (Brazil), Vice-President of the Expert Group, in his role as Chair of the fourth meeting of the Expert Group. At the opening of the meeting, statements were made by representatives of [...].

B. Statements

21. Statements were made by experts of the following States: Brazil, China, Ghana, Islamic Republic of Iran, Chile, Ukraine, Ecuador, Argentina, Mexico, Japan, Canada, United States of America, Russian Federation, Colombia, Germany, South Africa, United Kingdom of Great Britain and Northern Ireland, El Salvador, Paraguay, Tunisia, Australia, Costa Rica, Algeria and China.

22. Statements were made by the representative of [...] on behalf of the States Members of the United Nations that are members of the European Union, a regional economic integration organization.

23. Statements were also made by representatives of the following intergovernmental organizations: Council of Europe.

24. Statements were made by representatives of the following academic institutions: [...].

25. Statements were also made by representatives of the following non-governmental organizations: [...].

26. Statements were made by representatives of the following private sector entities: [...].

C. Adoption of the agenda and other organizational matters

27. At its 1st meeting, on 3 April 2018, the Expert Group adopted the following provisional agenda:

1. Organizational matters:
   (a) Opening of the meeting;
   (b) Adoption of the agenda;
   (c) Adoption of the Chair's proposal for the workplan of the Expert Group for the period 2018–2021.
2. Legislation and frameworks.
3. Criminalization.
4. Other matters.
5. Adoption of the report.

D. Attendance

28. The meeting was attended by representatives of 91 Member States, an observer State, a United Nations Secretariat unit, 3 intergovernmental organizations, 9 institutions from the academia and the private sector.

29. A provisional list of participants was circulated at the meeting (UNODC/CCPCJ/EG.4/2018/INF/1).

E. Documentation

30. The Expert Group had before it, in addition to the draft comprehensive study of the problem of cybercrime and responses to it by Member States, the international community and the private sector, the following documents:

(a) Provisional agenda (UNODC/CCPCJ/EG.4/2018/1);

(b) Chair's Proposal for the 2018–2021 workplan of the Open-ended intergovernmental expert group meeting on Cybercrime, based on Commission on Crime Prevention and Criminal Justice resolution 26/4 (UNODC/CCPCJ/EG.4/2018/CRP.1);

V. Adoption of the report

31. At its 6th meeting, on 5 April 2018, the Expert Group adopted its report (UNODC/CCPCJ/EG.4/2018/L.1).